

1 Jackson Howard, for:

2 HOWARD, LEWIS & PETERSEN  
3 ATTORNEYS AND COUNSELORS AT LAW  
4 120 EAST 300 NORTH STREET  
5 PROVO, UTAH 84601  
6 TELEPHONE: 378-6345

7 Plaintiffs

8 Attorneys for

9 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

10 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

11 RONALD R. HOVER and EVELYN  
12 HOVER,

13 Plaintiffs,

14 C O M P L A I N T

15 vs.

16 HEBER CREEPER, INC., MATT  
17 AUSTIN, C. H. NIELSEN and  
18 GORDON WHEELER,

19 Civil No. \_\_\_\_\_

20 Defendants.

21 COME now the plaintiffs and complain of the defendants and  
22 for cause of action allege:

23 1. The plaintiffs are residents of Wasatch County, State of  
24 Utah.

25 2. The defendant, Heber Creeper, Inc., is a Utah corpora-  
26 tion, with its principal place of business at Heber, Wasatch  
27 County, Utah, hereinafter sometimes called Railroad.

28 3. The defendant, Matt Austin, is a resident of Hawaii; the  
29 defendant, C. H. Nielsen, is a resident of Salt Lake County, State  
30 of Utah; and the defendant, Gordon Wheeler, is a resident of Davis  
31 County, State of Utah.

32 4. The defendants, Matt Austin, C. H. Nielsen and Gordon  
Wheeler, were, at the time of the accident referred to herein,  
agents and employees of the defendant corporation, acting within  
the course of their employment, and will hereinafter separately  
be referred to as Austin, Nielsen and Wheeler.

5. The defendants, Austin, Nielsen and Wheeler, constituted

1 the entire train crew, directing the movements of the locomotive  
2 referred to in the First Cause of Action.

3 6. The plaintiffs are husband and wife and the parents of  
4 three minor children, to-wit: Tina, Michelle and Shanna.

5 FIRST CAUSE OF ACTION

6 (For Ronald R. Hover)

7 7. On or about the 2nd day of August, 1976, the defendants  
8 were operating a steam locomotive, backing in a southerly direc-  
9 tion at a point where its tracks cross the Heber City Street known  
10 as Center Street. *1st St*

11 8. At all times herein mentioned, the defendant Railroad was  
12 acting by and through its authorized agents and employees.

13 9. The locomotive was backing at a time after dark and after  
14 the sun had set, without any lights, without adequate flagmen, and  
15 without any warnings that it was near or approaching the crossing.

16 10. The defendants, jointly and severally, were negligent  
17 in that they failed to have the locomotive under control, failed  
18 to warn of its presence on the track, failed to yield the right  
19 of way to the plaintiff, Ronald Hover, failed to comply with Public  
20 Utility Commission regulations for the movement of trains, and  
21 failed to stop the locomotive in time to prevent the collision  
22 with the plaintiff, Ronald Hover's, vehicle.

23 11. The plaintiff, Ronald Hover, acting carefully and pru-  
24 dently, was driving westerly upon the said Center Street and was  
25 struck at the crossing at the said railroad crossing by the engine  
26 of the defendant corporation. The conduct of the defendant, its  
27 agents and employees, was negligent and the proximate cause of  
28 the collision and the resulting personal injuries of the plaintiff,  
29 Ronald Hover.

30 12. By reason of the negligence of the defendants, the plain-  
31 tiff has sustained permanent, painful and debilitating injuries,  
32 all to his general damage in the amount of \$2,000,000.00.

1 13. By reason of the negligence of the defendants, the plain-  
2 tiff has incurred, and will incur, hospital and medical expenses,  
3 the exact amounts of which are unknown at this time, but for  
4 which the plaintiff shall be entitled to recover upon proof.

5 14. By reason of the negligence of the defendants, the plain-  
6 tiff has lost earnings, and in the future will lose earnings, and  
7 further has had substantial and material damage to his earning  
8 capacity, all of which he shall be entitled to recover upon proof.

9 15. Pursuant to the provisions of Utah Code Annotated,  
10 §78-27-44, the plaintiff is entitled to interest at the rate of  
11 eight percent (8%) per annum on all special damages from August  
12 2, 1976, to the date of entry of judgment.

13 SECOND CAUSE OF ACTION

14 (For Evelyn Hover)

15 16. The plaintiff, Evelyn Hover, incorporates all of the  
16 allegations contained in the First Cause of Action.

17 17. By reason of the negligence of the defendants, the  
18 plaintiff has been deprived of the sex, society, comfort and  
19 support of her husband, all to her general damage.

20 WHEREFORE, plaintiffs pray judgment against the defendants as  
21 follows:

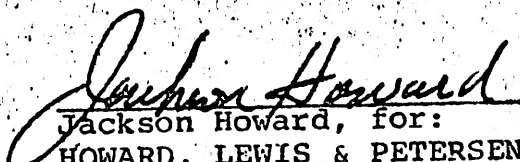
22 1. For general damages in such amounts as may be established  
23 upon proof.

24 2. For special damages in such an amount as may be estab-  
25 lished upon proof.

26 3. For interest at the rate of eight percent (8%) per annum  
27 on all special damages, computed from August 2, 1976, to the date  
28 of entry of judgment.

29 4. For costs of this action and for such other relief as to  
30 the Court may seem just and proper in these premises.

31  
32 Plaintiffs' Address:  
1220 Pine Canyon Road  
Midway, Utah

  
Jackson Howard, for:  
HOWARD, LEWIS & PETERSEN  
Attorneys for Plaintiffs



JACKSON HOWARD, for:  
HOWARD, LEWIS & PETERSEN  
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120 East 300 North  
Provo, Utah 84601  
Telephone: 373-6345

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

RONALD R. HOVER and EVELYN  
HOVER,

Plaintiffs,

S U M M O N S

vs.

HEBER CREEPER, INC., MATT  
AUSTIN, C. H. NIELSEN and  
GORDON WHEELER,

Civil No. \_\_\_\_\_

Defendants.

THE STATE OF UTAH TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file an answer in writing to the attached complaint with the Clerk of the above entitled Court, and to serve upon, or mail to HOWARD, LEWIS & PETERSEN, Plaintiff's attorneys, a copy of said answer, within 20 days after service of this Summons upon you.

If you fail so to do, judgment by default will be taken against you for the relief demanded in said complaint which has been filed with the Clerk of said Court and a copy of which is hereto annexed and herewith served upon you.

DATED this 26th day of January, 19 77.

HOWARD, LEWIS & PETERSEN

BY Jackson Howard  
Jackson Howard  
Attorneys for Plaintiff  
120 East 300 North  
Provo, Utah 84601

Summons & Complaint  
Served this 26th day of January on

Heber Creeper Inc.  
Larry Ashton Process Agent

Defendants:

28 day of January, 19 77

Heber Creeper Inc.  
Provo, Utah  
Thayer G. Zelt  
F. L. WITT, Sheriff